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Senate

Statement of Senator Dianne Feinstein

"Strike Small Engine Provision in VA/HUD Appropriations Bill"

Mrs. FEINSTEIN. If ever there was a special interest provision in an appropriations bill, this is the mother and father of such a rider. For this reason, I rise in opposition to what is called the small engine provision in the 2004 VA-HUD appropriations bill.

I note that the Senator from Missouri did not send to the desk an amendment he plans to introduce to change the underlying amendment that was introduced in the Appropriations Committee markup. So I am going to try to address both pieces of legislation and indicate my opposition to both.

Although the amendment that he says he is going to introduce is better than the language in the underlying bill, it is still unacceptable because it would effectively block any State regulation of small road engines anywhere in America. This provision was inserted into the chairman's mark at the request of a single engine manufacturing company, Briggs & Stratton from Missouri.

As originally written, the underlying bill would effectively preempt any State regulation of pollution from off-road engines smaller than 175 horsepower. I understand the Senator from Missouri now wants to narrow his provision to block any regulation of spark engines under 50 horsepower and not include diesel

engines. This new provision is better but, as I said, still unacceptable.

Since the beginning, section 209 of the Clean Air Act has recognized that States, with extraordinary or extreme pollution, need flexibility to reduce pollution and protect public health. A California law actually served as the model for the original Clean Air Act. I think that is interesting. As a result, the Clean Air Act has always allowed California to set its own standards for some sources of pollution. Later changes in the law allowed other States to adopt the California standards, if they so chose.

The 1990 Clean Air Act amendments gave California the right to regulate emissions from off-road engines smaller than 175 horsepower, except for agricultural and construction equipment. So other States are currently free to adopt the California standards or not. The right of States to regulate small engines would quickly be taken away if the Bond provision is allowed to remain in this bill. Mr. President, individual States should have the right to regulate these small engines as they choose.

That is what States rights is all about. Many States have benefitted from the process established in section 209, and California's regulations often serve as models

for the rest of the Nation. The small engine provision would amend section 209 and remove important rights from States. I oppose using the appropriations process to take away States rights under the Clean Air Act. This kind of change to a major law like the Clean Air Act deserves a full debate, hearing, and review in the Environment and Public Works Committee. It has had none of the above.

It is important for all of my colleagues to understand that one company is behind this so-called small engine provision. We are having this debate simply because Briggs & Stratton disagrees with a recently adopted California regulation which, incidentally, does not go into effect for another 5 years. I will explain why that becomes relevant later.

On September 25 of this year, California adopted a regulation reducing emissions from off-road engines smaller than 25 horsepower, mainly lawn and garden equipment. This is the interesting thing: This regulation is the equivalent of removing 1.8 million automobiles from California's roads by 2020. That is how big an item this is in my State. Once again, let me make it clear that we are talking about the equivalent of 1.8 million automobiles.

But the issue here is not whether we should support any particular regulation from the California Air Resources Board. The issue is whether we should permanently take away States rights to regulate these engines, period. Briggs & Stratton is using opposition to a single California regulation to block every State's efforts to regulate these engines anywhere in the future. I do not believe we should take such important changes to the Clean Air Act lightly, especially when such changes have been included in an appropriations bill without having adequately looked at the crucial stakes involved.

Briggs & Stratton has made a series of arguments in opposition to the California regulation. We heard the Senator from Missouri say the regulation would force the company to close plants, threaten thousands of American jobs, and for jobs to be moved to China. I don't know how the Senator from Missouri knows that they would move jobs to China unless Briggs & Stratton have told him that is what they plan to do.

At the very same time that Briggs & Stratton is lobbying this Senate to preempt California regulations, the company was telling the Securities and Exchange Commission an entirely different thing. On September 11 of this year, while lobbying the Senate in support of the small engine provision, Briggs & Stratton filed their annual 10-K report with the Securities and Exchange Commission. Here is what they say in their report:

"While Briggs & Stratton believes the cost of the proposed regulation on a per engine basis is significant, Briggs & Stratton does not believe that the [California Air Resources Board] staff proposal will have a material effect on its financial condition or results of operations, given that California represents a relatively small percentage of Briggs

& Stratton's engine sales and that increased costs will be passed on to California consumers."

So point 1, California is just a small part of the Briggs & Stratton market. Point 2, it will not affect the financial viability of that market. And point 3, they would only pass on the costs of retrofitting these engines to whomever would buy it, something that is fairly typical. Now why all this talk about moving 22,000 jobs to China if, in fact, what they said on their SEC statement is correct? The SEC statement is the be-all-and-end-all for a company's integrity and credibility.

If you lie on your SEC statement, you get into a lot of trouble with the Securities and Exchange Commission.

Section 209 of the Clean Air Act gives California the right to regulate these engines. The company is free to pass along these costs to Californians. My State will accept those costs because we need cleaner air. As far as I am concerned, this is the way regulations should work.

Since we brought the annual report to the attention of the public, Briggs & Stratton has argued that the annual report was simply discussing the company's bottom line and that sending jobs overseas would not affect the bottom line. But that is not what the company's annual report says. The report says, again, California is but a small share of the Briggs & Stratton market. Increased costs will simply be passed along to California consumers. It does not say that any increased costs will force jobs overseas.

So Briggs & Stratton is telling the Securities and Exchange Commission that everything is fine and at the same time telling the media, the public, and this body

that the sky is falling.

Senator Boxer and I have asked the Securities and Exchange Commission to investigate whether Briggs & Stratton has broken any securities laws by telling such drastically different stories. We are still waiting a response.

In terms of jobs, my colleagues should also know that Briggs & Stratton's SEC report is referring to the original regulation proposed by the Air Resources Board. Since the SEC report was filed, the California Air Resources Board has continued to work with the industry to modify the regulation to correct fire safety concerns and to reduce costs, and I believe they will get there. They have 5 years to do so.

Madam President, what I am going to be doing in this portion of my remarks is essentially showing that Briggs & Stratton really is an isolated company asking for this. By so asking for it, they are going to cause additional costs to other industries. So I hope to make that argument now.

Last month, the Outdoor Power Equipment Institute, the small engine industry's leading trade group of which Briggs & Stratton is a member issued a press release which said that the industry's input into the adopted regulation made the regulation acceptable. This press release details the concessions made by the State and said that the Air Resources Board largely adopted the industry's counterproposal. In other words, the industry trade council, of which Briggs & Stratton is a member, had their counterproposal adopted by the State Air Resources Board and yet Briggs & Stratton is still opposing the action.

I quote the release:

"For the past 2 years, the Outdoor Power Equipment Institute has been

working proactively with the staff of the California Air Resources Board to improve proposed catalyst base exhaust standards for real problems.”

The press release goes on to say:

“In direct response to the Outdoor Power Equipment Institute's advocacy, the California Air Resources Board unanimously adopted on September 25 a modified framework which, one, relaxes the stringency of the California Air Resources Board's staff's proposed tier 3 exhaust standards and, secondly, substantially improves the overall general framework for the still-to-be-defined evaporative regulations.”

I ask unanimous consent that the text of the Outdoor Power Equipment Institute's press release be printed in the *Record* at the conclusion of my remarks.

Additionally, I have a September 26, 2003, letter from Alan Lloyd, the chairman of the California Air Resources Board, to the Senator from Missouri, detailing revisions that were made to the regulation. Referring to the modified regulation, Mr. Lloyd states as follows:

“I believe the action taken by the Air Resources Board is a win/win situation. We achieved our emission reduction goal. The adopted regulation, based on an industry proposal, will reduce costs, simplify compliance and avoid job losses.”

So the Air Resources Board took the industry's proposal, the industry association of which Briggs & Stratton is a member. That is why this thing is so unfair.

I ask unanimous consent that the text of this letter from Mr. Lloyd to the Senator from Missouri be printed in the *Record* following my statement.

Briggs & Stratton also raised

concerns about fire safety. The Senator from Missouri has placed a November 6 letter from the California Association of Fire Chiefs in the *Record*. That letter expressed concerns about the proposed California regulation.

I take these concerns very seriously. The last thing I want to do is increase the risk of fire. So we need to make sure these engines are safe, and the regulation has 5 years to make adjustments before it goes into effect, ample time to make such changes as replacing heat shields and doing whatever else is necessary to ensure these engines are fire safe.

There is apparently some miscommunication between the fire chiefs and the Air Resources Board. I have just received a letter dated November 11. I want to read from this letter:

“The fire safety issues we raised [and that would be the November 6 letter that Senator Bond printed in the *Record*] need more attention and require independent assessment before engineering and production decisions are made [which they have not been up to this time]. In our most recent discussions with [the Air Resources Board], they support the idea of an independent study, and have proposed moving forward with a study, much the same as what is now underway with catalytic converters being used in marine applications.

“We enthusiastically support this idea, and will be working closely with [the California Air Resources Board], the State Fire Marshal, and the US Environmental Protection Agency to ensure that all fire safety concerns are addressed. We wish to make clear that we regard fire safety and environmental quality as being equally important, and wish to make it clear that we support without reservation the air quality goals of the proposed requirements.

“We support the regulation moving forward as we have received assurances from CARB [the California Air Resources Board] that our safety concerns will be addressed through this independent study.”

So I think the concerns of the Senator from Missouri are a bit overstated in view of the fact that the fire chiefs, the fire marshal, and anyone else will work closely with CARB in the ensuing 5 years to correct any safety problems that might exist.

The letter goes on, and this is important:

“Finally, we understand that, as a separate matter, the Senate is debating the question of whether States are free to develop safety and environmental standards. We were never asked to comment on this matter but, for the record, we do not support legislation that would interfere with a State's ability to protect its own citizens. To the contrary, we have had to count on the State of California to develop fire safety standards for upholstered furniture, mattresses and bedding, because the Federal Government has failed to do so. The issues of air quality, as they relate to outdoor power equipment, can be addressed, and I believe that working closely with the Air Resources Board, we will find a solution that will provide a high degree of fire safety while maintaining the Board's goals for air quality.”

Mr. President, I would like to work with the Senator from Missouri, the Air Resources Board, fire safety officials, and the small engine industry to make sure the California regulation is fire safe. We have 5 years to do so. It is possible to do so. But what we cannot do is take away the State's rights to be concerned about its citizens, and that is exactly what Senator Bond is trying

to do.

He gives jurisdiction, for the regulation of small engines, to the EPA. What the fire chiefs have just said is the EPA has refused to move on areas such as bedding and other areas which cause fires, so the State has had to do it for themselves.

Mr. President, States rights are a major part of this issue and I thought these rights were part of everything we believed in -- letting a State, where it can, regulate for itself. Again, I think it is unfortunate that Briggs and Stratton is using safety concerns about a single regulation to block all future efforts to reduce pollution from these engines in any State.

Let me tell you why this is so big for California. We have the worst air quality in the Nation. We have seven ozone nonattainment areas. That is more than any other State. Los Angeles is the Nation's only extreme ozone nonattainment area. The San Joaquin Valley is not far behind. This year has been the worst year for smog in southern California since 1997, and the San Joaquin Valley is in a similar situation.

This pollution has severe consequences for public health and for our economy in California. Let me tell you what the Air Resources Board says will be the result of the efforts of the Senator from Missouri. They say Senator Bond's provision could lead to 340 premature deaths per year in California due to deteriorating air quality.

I believe States with serious pollution problems need to be able to reduce emissions wherever possible. This small engine provision would place a very important source of pollution off limits to State regulation.

I understand a modifying amendment is going to be introduced on behalf of Senator Bond that will

change the current bill language, which currently blocks the regulation of off-road engines smaller than 175 horsepower. All told, these engines alone emit as much pollution as 18 million automobiles. Can you believe that? Small off-road engines emit as much pollution as 18 million automobiles. That is a big number for California and any reduction in this pollution would benefit California greatly.

The narrower version of this provision, which has yet to be introduced but I trust will be, would still block State regulation of spark engines smaller than 50 horsepower, which represents the majority of small engines that exist and operate in my home State. According to the California Air Resources Board, engines under 50 horsepower emit as much pollution as 4 million cars, just in California. This is more than 100 tons of smog-forming pollutants per day in my State alone.

The modifying amendment that we understand will be sent to the desk will essentially mandate 1,500 more tons of smog-producing pollutants a day in California -- all to benefit one company that is not telling the truth on its SEC statement. These off-road engines are also among the least regulated and dirtiest engines around.

According to the California Air Resources Board again, operating the average gas-powered lawnmower for just 1 hour produces as much pollution as driving a car for 13 hours. I would hazard a guess that no one in this Senate knew that operating a lawnmower for 1 hour produces as much smog as operating a car for 13 hours. Keep in mind that the lawnmower is only about 5 horsepower and the car engine is far larger.

Even running a small string trimmer

for an hour produces as much pollution as driving a car for 8 hours. Again, I hazard a guess that no one in this Senate knows that operating a small string trimmer for an hour produces as much pollution as 8 hours of driving a car. The bottom line: These are very dirty engines.

California is already struggling to comply with national air quality standards. We need every industry to do their fair share. According to the Air Resources Board, the State has to reduce emissions from these engines in order to achieve compliance with national air quality standards.

In other words, if California is not allowed to proceed with the regulations they put forward on September 25, we will be violating clean air standards. What happens if we do it? What happens is that California loses \$2.4 billion in highway transportation moneys. That is how important this issue is for the State of California and that is how dastardly this amendment -- an authorization on an appropriations bill -- really is.

California cannot afford to remain out of compliance with national standards. We also can't afford to take tools away from States that are in this situation. If we can't reduce emissions from off-road engines, then we will have to cut pollution from other sources. What does that mean? Other sources are already facing heavier regulation, so cutting their pollution will be more expensive and place more burden on other industries.

On this point I would like to quote a September 25 letter from the Environmental Council of the States. That is an organization that represents environmental agencies in all 50 States. Let me read what they say:

"Removal of this ability to regulate

a substantial part of a State's inventory, means that States will have to obtain reductions from the stationary source area [key, from the stationary source area], an area that is already heavily regulated at substantially higher cost. Businesses facing global competition will opt to either shift work to off-shore facilities or to simply close, with concomitant negative consequences on the local and national economy."

It is critical that this language be eliminated from the HUD-VA appropriations bill.

This is the environmental council to which every State belongs.

What does this mean? This means that every oil refinery will have to have tough requirements and that every utility will have to have tough requirements. The cost of gas will rise, and the cost of energy will rise. Every stationary source, if we can't tackle this area because it is so big, will have to have their standards tightened.

This is all for one company. Every other company that makes small engines has said they can comply, except one company in Missouri that says in their SEC report, no problem, and comes here and says, we are going to move our jobs to China. A whole series of companies will be disadvantaged, but one Missouri company will suffer no financial consequences.

I ask unanimous consent that the full text of this September 25 letter from the Environmental Council of States be printed in the *Record* following my remarks.

Mr. President, the debate over the small engine provisions is focused on California for this point. But it is also clear that the effects go far beyond California.

Remember that under the Clean Air Act, once California passes the

regulation, other States can then replicate that to any degree they so choose. This is where it begins to affect a number of other States. The small engine provision in the VA/HUD appropriations bill is a problem for every State and for every Senator who believes individual States should be able to adopt their own rules and regulations on issues such as these.

States with serious pollution problems include Texas, Tennessee, Pennsylvania, Illinois, North Carolina, New York, New Jersey, Maryland, and many others know they need to be able to reduce pollution from every possible source. Some States have already moved forward with regulations affecting off-road engines.

This legislation -- the underlying bill, as well as the amendment that we understand will be sent to the desk shortly -- will cut this off, remove the right from a State and give it to the EPA that historically has been a slow mover in this area.

According to the associations representing State and local pollution control officials, the original version of the small engine provision would have blocked the current program in seven States -- Alaska, Connecticut, Massachusetts, Nevada, Texas, and Wisconsin.

The 175-horsepower engine would also block programs in at least eight States that are considering future regulations: Alabama, Illinois, Nebraska, New Jersey, Pennsylvania, South Carolina, Tennessee, and Virginia, in addition to the District of Columbia.

The States recognize this threat to their rights. I have already quoted a letter from Environmental Council of the States. We have also received letters in opposition to the Bond provision from the National

Conference of State Legislatures, the Southeastern State Air Resources Managers representing State air pollution control agencies in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, and the associations representing State and local air pollution control officials from all 50 States.

I ask unanimous consent that the letters from these organizations be printed in the *Record*.

Mr. President, the States also propose compromise language that would still place some of these engines off limits. To quote the letter from the Southeastern States Air Managers:

"Please note that other compromise amendments which fall short of fully restoring section 209(e)(1)(a) are, in our opinion, unacceptable and will constrain States as discussed above. This association and your State air pollution control agencies would appreciate your support of removal of the Bond amendment from S. 1584, the HUD VA appropriations bill."

Many other States are just beginning to realize the importance of this small engine provision. As we move forward with more protective air quality standards, more and more States will need to reduce emissions to comply with national standards. Those States will also need to reduce pollution from these very engines because there are so many of them and they are so very dirty. I strongly believe we should protect a State's right to do so.

We should not use this appropriations bill to take rights away from the States without knowing what we are doing, without a hearing, and without review by the authorizing committee.

As I said, this rider is the mother and father of all riders because it authorizes a major reduction in States rights with no hearings whatsoever, no ability to question Briggs & Stratton, and no ability to ask them why they said on their SEC report that this would cause no financial disadvantage to the company, that California is such a small portion of their market, and they would just pass on any additional costs to the consumer.

Why would they tell the Senate or the Senator from Missouri they would move jobs to China if this passed? The statements of Briggs & Stratton make me very suspicious.

The Clean Air Act has long recognized that States with serious air pollution problems need to be able to set strong standards to protect public health. The hard-fought 1990 Clean Air Act amendments give the States the ability to regulate these off-road engines.

With respect to the California regulation, I will work with fire officials, air resources boards, the industry, and the Senator from Missouri to ensure that the final regulation is safe. But I believe it is clear that this should not be a debate about a specific State regulation. That is our problem. We will handle it. California is entirely able and capable of handling this problem. We don't need someone else to tell us what to do.

This is a debate about making sure the States have the flexibility necessary to protect the public health.

It is hard for me to understand why anyone would do this on an appropriations bill when the consequences are so dire, with over 300 premature deaths likely to be caused by worsening air pollution, or if the State moves to further tighten

stationary sources and really send a whole magnitude of companies offshore.

I don't think in an appropriations bill we should take well-earned States rights away from every State in this Union to benefit one company. Remember, every other manufacturer of small engines is going along with what California is doing. They have all said they could do it. They have all said they could adapt these standards into their manufacturing. They have all said they could change. They have all said they can add adequate heat shields.

Furthermore, the pollution from these engines under 175 horsepower accounts for 17 percent of California's mobile smog emissions. This is not minor. We are talking about 17 percent of a State that has seven nonattainment areas in it, 17 percent of their pollution, and an Air Resources Board that has accepted the industry's proposal, an industry trade council, to which Briggs & Stratton belongs, submitted a proposal they could live with to the Air Resources Board.

The Air Resources Board accepted it. And now Briggs & Stratton is coming back and saying: We do not agree; we will get our Senator to put a rider in a bill -- with no hearing, without understanding the consequences that this provision will move the right for every single State to protect its citizens.

That is truly wrong. This morning, I ask my colleagues to stand up for their states rights. I ask them to stand up and protect public health. I ask them to oppose this special provision on this appropriations bill put there to benefit one company when every other company says they can comply.

Madam President, I thank the Senator from Maryland for her comments. She is a superior ranking member. When she is chairman of the subcommittee, she is a superior chairman of the subcommittee. I do not know any Senator who loves her assignment more than the Senator from Maryland. If

we hear one thing from her, it is about her VA-HUD bill. She does a super job. I am just so grateful for her service to our country, to our veterans, and to housing. It has just been exemplary.

I yield the floor.